## UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re: Case No. 04-44875-RJK Chapter 13

Michael A. Lehmann,

#### **OBJECTION TO CONFIRMATION**

Debtor.

- TO: Debtor, Michael A. Lehmann; Attorney for Debtor, Robert J. Everhart; Jasmine Z. Keller, Chapter 13 Trustee; U.S. Trustee; and other parties in interest.
- 1. Bankruptcy Solutions Inc., ("GMAC") a secured creditor of Debtor, by its undersigned attorney, makes this objection to the confirmation of the proposed plan of the Debtor.
- 2. This objection is filed pursuant to Fed. R. Bankr. P. 3020(b) and GMAC requests this Court to enter an order denying confirmation of Debtor's proposed Chapter 13 plan (the "Plan"). This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sec. 1334(a) and 157(a), 11 U.S.C. §1325 and applicable rules. This is a core proceeding.
- 3. Hearing on confirmation of the Plan is scheduled for 10:30 a.m. on November 18, 2004, before the Honorable Robert J. Kressel, in Courtroom 8 West United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, or as soon thereafter as counsel can be heard.
- 4. The petition commencing this Chapter 13 case was filed on August 16, 1999 and the case is now pending in this Court.
- 5. GMAC holds a valid, perfected interest in a 1999 GMC Jimmy, VIN 1GKDT13W3X2542436, (the "Vehicle"). The value of the Vehicle is \$9,300.00.

- 6. Copies of GMAC's agreement with Debtor (the "Contract") and evidence of perfection of GMAC's interest in the Vehicle are attached hereto as Exhibits A and B and incorporated herein by reference.
- 7. The balance due to GMAC as of the petition date totals \$8,499.21 together with interest accruing at the contract rate of 10.99%. The fair market value of the Vehicle is \$9,300.00. Accordingly, the claim of GMAC should be treated as secured to the extent of \$9,300.00.
- 8. The Plan, however, provides for (i) GMAC's secured claim of \$6,625.00; (ii) total payment on GMAC's secured claim of \$6,936.00; and (iii) monthly payments of \$578.00 commencing in month 2 for 12 months.
- 9. Using the contract rate of interest, the Plan fails to satisfy GMAC's secured claim plus interest utilizing the payments set forth by Debtor. An amortization of the proposed payments is attached hereto.
  - 10. The Plan does not comply with the provisions of Chapter 13.
- 11. The Plan does not provide GMAC with adequate protection of its interest in the vehicle.
- 12. Movant gives notice that it may, if necessary, call J. Wood or another representative of GMAC to testify at the hearing.
- 13. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION WILL BE USED FOR THAT PURPOSE.

WHEREFORE, GMAC respectfully requests this Court to enter an order denying confirmation of the Debtor's proposed plan and such other further relief as is just and equitable.

Dated: September 30, 2004\_\_\_ RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn Marilyn J. Washburn (#0324140) 7700 Bonhomme, 7th Floor St. Louis, MO 63105 (314) 727-0101 Attorneys for GMAC

## UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:

Case No.04-44875-RJK Chapter 13

Michael A. Lehmann,

Debtor.

MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION

GMAC submits this memorandum of law in support of its objection to confirmation in the above-entitled matter.

#### **FACTS**

GMAC holds a valid, perfected interest in a 1999 GMC Jimmy, VIN 1GKDT13W3X2542436 (the "Vehicle").

The balance due to GMAC as of the petition date totals \$8,499.21. The interest rate on the Contract is 10.99%. The fair market value of the Vehicle is \$9,300.00. Accordingly, the claim of GMAC.should be treated as secured to the extent of \$9,300.00.

The Plan, however, provides for (i) GMAC's secured claim of \$6,625.00; (ii) total payment on GMAC's secured claim of \$6,936.00; and (iii) monthly payments of \$578.00 commencing in month 2 for 12 months.

### DISCUSSION

Pursuant to 11 U.S.C. §1325(a)(5), a plan must distribute deferred cash payments equal to the present value of the secured claim. *Rake v. Wade*, 113 S.Ct. 2187, 124 L.Ed.2d 424 (1993). In this case, the Debtor has proposed payments that do not satisfy GMAC's secured claim plus interest at the contract rate. Accordingly, the Plan does not meet the confirmation requisites and should be denied.

## **CONCLUSION**

For all of the reasons set forth herein, GMAC respectfully requests that the Court deny confirmation of Debtor's Chapter 13 Plan.

Dated: September 30, 2004 RIEZMAN BERGER, P.C.

/e/ Marilyn J. Washburn Marilyn J. Washburn (#0324140) 7700 Bonhomme, 7th Floor St. Louis, MO 63105

(314) 727-0101 Attorneys for GMAC

# UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:	Case No. 04-44875-RJK
Michael A. Lehmann	Chapter 13
Debtor.	
UNSWORN DEC	CLARATION FOR PROOF OF SERVICE
Riezman Berger, PC, with an office 63105, declares that on the date set <b>Confirmation</b> upon each of the enby enclosing same in an envelope v	torney licensed to practice law in this court, and employed by e address of 7700 Bonhomme, 7th Floor, St. Louis, MO forth below, I served the annexed <b>Objection to</b> tities named below by mailing to each of them a copy thereof with first class mail postage prepaid and depositing same in in addressed to each of them as follows:
United States Trustee 300 South 4th Street, Suite 1015 Minneapolis, MN 55415	(Attorney for Debtor) Robert J. Everhart P.O. Box 120534 New Brighton, MN 55112
(Debtor) Michael A. Lehmann 10981 Bluebird Street Coon Rapids, MN 55433	(Trustee) Jasmine Z. Keller 12 South 6th Street, Suite 310 Minneapolis, MN 55402
And I declare, under penalty of per	jury, that the foregoing is true and correct.
Dated: Sentember 30, 2004	Signed: /e/ Marilyn I Washburn

# UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:	Case No. 04-448/5-RJK Chapter 13
Michael A. Lehmann,	
Debtor	ORDER
This matter came before	ore this Court for confirmation of the Chapter 13 plan of
	opearances were noted in the record. Based upon all the files and
records, the Court makes this	Order pursuant to the Federal Rules of Bankruptcy Procedure.
IT IS HEREBY ORD	ERED, That confirmation of the Chapter 13 plan of Debtor is
denied.	
Dated:	
	Robert J. Kressel
	United States Bankruptcy Judge

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THOMAS PONTIAC-BUICK-GMC, INC. 3350 185TH AVE. NW COON RAPIDS MN 55448

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Optional insurance or Service Continues. This contract may contain there is no place in surance or service contract. If the vehicle is represented, your agree that the Creditor may claim benefits under rights fromtacts and permitted than to obtain returned to the contract may contain the represented or Service Contract them to obtain returned to maximal disappears or service contracts and permitted than to obtain returned to maximal disappears or service contains them to obtain returned to maximal to reditor. If any charge for required incurance is them to obtain returned to the creditor. If any charge for required incurrence is the vehicle, Any returned or obtain covers only the Creditor brian rest in the Vehicle. Any returned optical covers only the Creditor will be credited to your scounts.

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take the vehicle from you. To take the vehicle the Creditor can enteryour property, or the property where it is stored, so long as it is done passes high if their its any personal property in the vehicle, such as a lotting, the Creditor can store it for you. Any accessories, equipment or replacement parts will remain with the vehicle.

4. 2.

Getting the Vehicle Back After Repossession. If the Creditor repossesses the vehicle you have the right to get it back (redoem) by paying the entire amount you owe on the contract (not just past due paymonts) plus any late charges, the cost of taking and storing the vehicle and other expenses that the Seller or the Creditor has had, in squring the entire amount you over on the contract, the Creditor will give you a entire amount you over on the contract, the Creditor will give you a refund for part of the shance charge signed the same as if you had propally your contract. You'right to redoem will end when the vehicle is said.

Sein of the Repossessed Vehicle. The Creditor will send you a written notice of axis at least 10 days before sailing the vehicle. If you do not notedom the vehicle by the date on the notice, the Creditor can sel it. The Creditor will use the not proceede of the sails to pay all or part of your date.

The net proceeds of sale will be figured this way: Any late charges and any charges for biding and storing the vehicle, clearing and sevenising site, and any atterney less and court costs will be subtracted from the

If you owe the Creditor less than the not proceeds of sale, the Creditor will pay you the difference, unless required to pay it to someone size. For example, the Creditor may be required to pay a tender who has given you a loan and size taken a security interest in the vehicle.

If you have more than the net proceeds of sale, you will pay the Creditor the net proceeds of tells and what you own when the Creditor sate for it. If you do not pay this amount when asked, you may also be charged interest at the highest lawful rate until you do pay all you owe to the Creditor.

Collection Costs. If the Creditor hires an atomery to enfect what you awa, you will pay the atomor's reasonable fee and any court costs. The stiomer's fee will not exceed 15% of the anyount that you owe.

Cease in Entercing Rights and Changes of this Cantract. The Credi-lor can delay at reirals from enforcing any of its rights under this con-tract without looking them. For example, the Creditor can exame the time for making some payments without extending others. Any change in terms of this contract must be in writing and signed by the Creditor. No exal changes are binding. It any part of this contract is not valid, all other parts will rentain enforce able. Delay in Enforcing Rights and Changes of this Comrect. The Cred-

Warminities Seller Disclaims. You understand that the Seller is not offering any warminities and that there are no unplied warminise of marchantability, of fitness for a particular purpose, or any other warminites, express or implied by the Seller covering the weblots purpose, appress or implied by the Seller extends a written warming or service contract within 50 days from the date of tale contract.

The foregoing disclaimer of implied warranties does not apply if this contract covers in new values that was chained primarily for personal use unless you were informed in writing prior to signing this contract that the vehicle was sold on an "re is" or "with of leading basis and that you bear the entire risk as he like quality and performance of the variole.

An implied warranty of march unbobility generally means that the vehicle is fit for the ordinary purpose for which such vehicles are generally used. A warranty of fitnote for a particular purpose is a warranty that may area when the Saller hear each to know the particular purpose for which you require the vehicle and you rety on the Saller's axial or judgment to furnish a suitable vehicle.

This provision does not affect any warrenties covering the vehicle which may be provided by the vehicle manufacturer.

Used Our Suyers Guide. The information you ask on the window form to this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

Notice of Substitution of Contract. If Seller obtained this vehicle from General Motors Corporation (GM) on installment credit terms, this contract will be substituted by Seller for and replace the Seller's obligation to pay GM for the vehicle you are purchasing. This substitution will not change the amount you have agreed to pay the Seller, the payment achedule, the finance change or any of your rights and duties for this purchase. The jorns of this contract set torth your entire and only obtained to Seller, GMI, or any other holder of this contract.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH IS NOTICED OF THE DESTOR SHALL NOT EXCEED HEREOF, HEREUNDER BY THE DESTOR SHALL NOT EXCEED AMOUNTS RAID BY THE DESTOR HEREUNDER:

The preceding NOTICE applies only to goods or services obtained primarily for personal, temity, or household use. In all taker cases, Buyer will not easert applies only to goods or services obtained primarily for personal, temity, or household use. In all taker cases, Buyer will not easert applies to a spainst any subsequent holder or assignee of the vehicle or equipment obtained under this contract.

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST., ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

LEHMANN MICHAEL ALLEN 12341 HUMMINGBIRD ST COON RAPIDS MN 55448 First Class U.S. Postage PAID Parmit No. 171 St. Paul, MN

**DMU114** 

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Year Moke Model Title NR
1GKDT13W3X2542436 08/16/99 NO
VIN Security Date Rebuilt

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse side of this form for removing this lien.

GMAC 3500 W BOTH ST #300 MINNEAPOLIS MN 55431-4433

EXHIBIT.

## UNITED STATES BANKRUPTCY COURT DISTRICT OF MINNESOTA

In re:

Chapter 13

Michael A. Lehmann,

Bky. No. 04-44875-RJK

Debtor(s).

Affidavit of J. Wood

- I, J. Wood, of General Motors Acceptance Corporation, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information and belief:
- General Motors Acceptance Corporation has a security interest in the following (the "Collateral"):

N99 GMC JIMMY VIN/HIN: 1GKDT13W3X2542436.

- \$8,499.21 is the outstanding balance under the contract as of September 1, 2004. 2.
- \$1,561.50 is the amount of the existing delinquency as of September 1, 2004. 3.
- <u>\$9,300.00</u> is the replacement value of the Collateral. 4.
- Yes Appropriate insurance has been verified. 5.

Further your affiant sayeth not.

Dated:

9/17/2004

Bankruptcy Specialist

General Motors Acceptance Corporation

Subscribed and sworn to before me on September 17, 2004

JENAYA M. ROIGER NOTARY PUBLIC-MINNESOTA